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OFFICE OF PETITIONS

In re :
Knapp et al :
Application No. 09/759,629 : RECONSIDERATION OF
Filing Date: January 12, 2001 : PATENT TERM ADJUSTMENT
Attorney Docket: 60215139 :

This decision is in response to applicants' APPLICATION FOR PATENT TERM ADJUSTMENT timely¹ filed on January 10, 2005 requesting that the Office adjust the PTA calculation at the time of the notice of allowance from a determination of zero (0) days to a determination of ZERO (0) days.²

The applicants' request for PTA reconsideration is **GRANTED**. The Office will adjust the PTA determination at the time of the mailing of the notice of allowance to reflect forty days of administrative delay and two hundred and five (205) days of applicant delay as suggested by applicant.

Applicants assert that Office determination of zero (0) days is accurate but the amount of PTO delay and applicant delay is inaccurate. Applicants agree with the applicant delays of (49+96+2+52) days under either 37 CFR 1.704(b) or 1.704(c)(8). Applicants assert that the Office failed to assess an additional 6 days of applicant delay for the submission of an RCE on January 5, 2005. Applicants further assert that the Office erred in not assessing 40 days of Office delay for an over 4 month reply to the May 20, 2004 RCE submission. See 37 CFR 1.702(a)(2).

¹Issue fee paid on January 10, 2005.

²Although applicants are not contesting overall determination of zero (0) days. Applicants believe that the amount of PTO delay is forty days while applicant delay is zero days. This is different from calculated amount of 195 applicant delay and zero days of administrative delay.

Applicants arguments are persuasive. The Office failed to enter the RCE submission filed May 10, 2004 and accordingly the PTA failed to provide applicants with 40 days of administrative delay based upon failing to reply within four months of the filing of the RCE. In addition, the Office failed to file deduct the six days of applicant delay for an response more than three months after the mail date of the notice of allowance of September 30, 2004. Accordingly, the PTA at the time of the notice of allowance is zero days (40-205=0).

After the mailing of this decision, the file will be forwarded to the Office of Patent Publications for a prompt issuance of the patent. Any delays in issuing the application more than four months from the payment of the issue fee and all other requirements being satisfied will be calculated and provided notice to applicants in the issue notification letter that is provided to applicants approximately three weeks prior to issuance of the application.

Applicants have provided the required \$200.00 fee. No additional fees are required in the determination of this request.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, at 571-272-7757.

Kery Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Adjusted PTA calculation